IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4058 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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SAMBHAJI RAMCHANDRA GHORPADE - Petitioner(s)
Versus
KV BHANUJAN OR HIS SUCCESSOR IN OFFICE & 1 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner(s) : 1,
MR HIREN MODI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/02/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of

the Constitution of India, the petitioner has challenged the order passed by the respondents dated 08.05.1997 prematurely retiring the petitioner.

2. It is the case on behalf of the petitioner that the petitioner was serving as Deputy Superintendent of Police in S.R.P. Force Group – VIII, that; he was awarded various medals, certificates and letter of appreciation. It is the case on behalf of the petitioner that while petitioner was on sick leave with effect from 13th April, 1998, the impugned order dated 8th May, 1997 came to be served upon the petitioner, by which the petitioner was prematurely retired. Being aggrieved and dissatisfied of the said order of premature retirement, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Tushar Mehta, learned Advocate appearing on behalf of the petitioner has vehemently submitted that last “Adverse remarks” communicated to the petitioner was for the year 1995-96 vide letter

dated 20th September, 1996 was (1) Overall assessment – An average type of officer. It is submitted by him that as held by Hon'ble Supreme Court in the case of R.P.Malhotra v/s. Chief Commissioner of Income Tax, Patiala reported in 1990 AIR SC 2055 as well as judgment of the learned Single Judge of this Court assessment of a Officer as a average officer will not justify the exercise of powers of compulsory retirement. He has further submitted that prior to the said order, for the year 1994-95 adverse remarks were recorded in the Annual Confidential Reports of the petitioner to the effect that assessment of the petitioner's integrity is doubtful. However, against the said adverse remarks, the petitioner filed his representation against the same to the competent authority vide letter dated 23/12/1995. However, the representation was not accepted and the petitioner was informed by letter dated 21/03/1996 that his representation is rejected. However, the said adverse remarks were thereafter not continued in the subsequent A.C.R. for the year 1995-96. Therefore, it is submitted that on the basis of the adverse remarks of average type of officer, order of

premature retirement order ought not have been passed by the respondents and therefore, it is requested to allow the present Special Civil Application. It is also further submitted by him that during his service tenure, the petitioner received many awards, medals, certificates, etc. and, therefore, the order of premature retirement requires to be quashed and set aside.

4. An affidavit-in-reply is filed on behalf of the respondents and Shri Hiren Modi, learned Assistant Government Pleader appears on behalf of the State Government. Relying upon the affidavit-in-reply, it is submitted by Mr. Modi, that the petitioners' over all assessment was not satisfactory and thus, the Confidential Report's of last ten years were considered and thereafter, considering the same a conscious decision has been taken by the department dated 08.05.1997 to prematurely retire the petitioner in exercise of powers under Rule 161 of Bombay Civil Services Rules, 1959. It is submitted that the petitioner has been communicated adverse note of doubtful integrity in the year 1994-95 against which

the petitioner made representation and which came to be rejected and considering the A.C.R.s of the petitioner for the last 10 years, it was found that the same are not found satisfactory, therefore, he has been rightly prematurely retired, and therefore, it is requested to dismiss the main Special Civil Application.

5. Heard the learned Advocates appearing on behalf of the respective parties. On going through the impugned order dated 08.05.1997, it appears that the said order is an order simplicitor prematurely retiring the petitioner in exercise of powers under Rule 161 of B.C.S.R. It is not in dispute that under Rule 161 of B.C.S.R., considering last 10 years of C.R.s, and on attending the age of 50 years, it gives power to the Government to review and assess the work of the employee and if it is found that the work is not satisfactory, that employee can be prematurely retired in the public interest. On going through affidavit-in-reply, it appears that the petitioner's over all assessment was not found satisfactory and integrity was also doubtful. The petitioner's

A.C.R.s, for the year 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 were considered by the Department before passing the impugned order and it were found not satisfactory. Even the petitioner was communicated the note of adverse remarks in the year 1994-95, against which the petitioner made representation, which was also considered and rejected and the said adverse note was retained in the ACR. Thus, considering the last 10 years A.C.R.s and having found that the work of the petitioner was not satisfactory and when the decision has been taken in exercise of power under Rule 161 of B.C.S.R., it cannot be said that any illegality has been committed by the respondents in prematurely retiring the petitioner. On the basis of subjective assessment of the petitioner's record, the Government has decided to retire the petitioner prematurely.

6. In case of M.L.Binjolkar V/s. State of M.P. Reported in 2005 (6) SCC 224, the Hon'ble Apex Court has observed as under :

> *“It is triet law that an order of compulsory retirement is not a punishment. The employer*

takes into account various factors emanating from the employee's past records and takes a view whether it would be in the interest of employer to continue services of the employee concerned. It can certainly pass an order of compulsory retirement when the employee is considered to be a dead-wood and practically of no utility to the employer. The purpose and object of premature retirement of a Government employee is to be weed out the inefficient, the corrupt, the dishonest or the dead-wood from Government Service".

7. In the background of facts of this case, it cannot be said that there is any illegality committed by the respondents in retiring the petitioner prematurely while considering the overall A.C.R.s' and the fact that the petitioner was found to be of doubtful integrity, a decision is taken in the public interest to prematurely retire the petitioner, it cannot be said that the same is arbitrary and / or illegal.

8. It is required to be noted that initially ad-interim relief was granted by this Court. However, the same was subsequently vacated against which Letters Patent Appeal was filed and the same also came to be rejected. Be that as it may, on merits, as

stated above, it cannot be said that the impugned order of premature retirement is in any way arbitrary or illegal. The said order is passed on the basis of subjective assessment of the petitioner's record.

9. For the reasons stated above, the petition fails. Rule is discharged. There shall be no order as to costs.

[M.R.Shah, J.]

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